UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,383	09/23/2003	Jong-Hyun Yoon	0630-1845P	1937

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EXAMINER
SCHNURR, JOHN R

ART UNIT	PAPER NUMBER
2623	

NOTIFICATION DATE	DELIVERY MODE
06/16/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

	Application No.	Applicant(s)
Advisory Action **Before the Filing of an Appeal Brief**	10/667,383	YOON, JONG-HYUN
	Examiner	Art Unit
	JOHN R. SCHNURR	2623

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 May 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☒ The period for reply expires _3_ months from the mailing date of this final rejection.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

       NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _2-18_.

   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.

13. ☐ Other: _____.

/Christopher Grant/
Supervisory Patent Examiner, Art Unit 2623

Continuation of 11. does NOT place the application in condition for allowance because: In response to applicant's argument (Remarks pg. 11 para. 3 to pg. 13 para. 4) that the "transmission time of the entire A/V streams" and "A/V stream transmission time according to a defined reproduction capability of the server required for reproducing A/V streams", as recited in claim 2, are not analogous to the bandwidth discussed in Giammaressi (US 7,086,077), the examiner respectfully disagrees. Applicant's specification defines the "transmission time of the entire A/V streams" as the time it takes the server to read and output a quantity of data (pg. 6 lines 15-19). Bandwidth is defined by the Microsoft Press Computer Dictionary Third Edition (1997) to be "[t]he data transfer capacity of a digital communications system". The time necessary to output a quantity of data is the transfer capacity of the server. Therefore, the "transmission time of the entire A/V streams" is a measure of the server bandwidth. This "transmission time" is then compared to the "A/V stream transmission time according to a defined reproduction capability of the server required for reproducing A/V streams". The "defined reproduction capability" is the total amount of data transfer capacity of the server, or total available bandwidth. The system of Giammaressi clearly teaches determining if an A/V stream can be outputted by comparing the currently utilized transmission capacity with the total available transmission capacity (Fig. 2, column 6 lines 14-44).

In response to applicant's argument (Remarks pg. 13 para. 5 to pg. 14 para. 3) that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See In re McLaughlin, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case the motivation for the combination can be found in the references themselves. As stated in the Final Action dated 02/26/2008 Giammaressi teaches any type of broadband network may be used (column 5 lines 8-10). Goldthwaite discloses broadband home networks ([0026]).

In response to applicant's argument (Remarks pg. 15 para. 4 to pg. 16 para. 2) that one of ordinary skill in the art would not be motivated the modify the combination of Giammaressi, Goldthwaite and Seed (US PGPUB 2006/0015574) with Lam (US 6,917,569) because the base reference combination never discusses managing a disk array storage device, the examiner respectfully disagrees. Bleidt (US 5,671,377), which is incorporated by Giammaressi clearly discloses an array of disk drives can be used for the data storage unit (Fig. 1: 114-1 Giammaressi).

In response to applicant's argument (Remarks pg. 16 para. 3 to pg. 17 para. 3) that "[the office action] improperly redefines the invention and merely tries to render that non-claimed invention obvious", the examiner respectfully disagrees. The limitations common to claims 2 and 6 are met as described above and as in the detailed rejection. Furthermore, Giammaressi teaches the time taken to read data from the storage effects the amount of data that can be transferred from the server. Lam shows that the distance between two memory locations effects the read time of the storage device. Therefore, the combination teaches the transfer rate of a requested stream is dependent upon the locations in memory of the requested stream and the currently produced streams.